

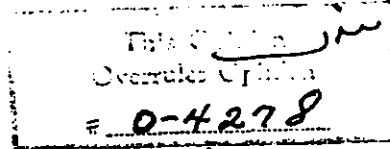


General 388

OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Dr. W. A. Davis
State Registrar of Vital Statistics
Texas State Board of Health
Austin, Texas



Dear Sir:

Opinion No. 0-4278-A
Re: Necessity of the statutory affidavits as proof of the facts stated in a birth certificate sought to be filed with the State Registrar of Vital Statistics.

You have called the attention of this department to a conflict between our opinion No. 0-4278 and our opinion No. 0-4190, both relating to the delayed filing of birth certificates for registration by the State Registrar. You ask the following question:

"Please advise me if the affidavits are the minimum requirements in submitting to the Court the record of an unregistered birth."

Article 4477, Rule 51a, Vernon's Revised Civil Statutes of 1925, as amended by Acts 1939, 46th Legislature, House Bill 614, and as further amended by House Bills 624 and 974, Acts 1941, 47th Legislature, provides in part as follows:

"And provided further, that any citizen of the State of Texas wishing to file the record of any birth or death that occurred in Texas, not previously registered, may submit to the Probate Court in the County where such birth or death occurred, a record of such birth or death written on the adopted forms of birth and death certificates; and provided further that any citizen of the State of Texas wishing to file the record of any birth or death that occurred outside of the State of Texas, not previously registered, may submit to the Probate Court in the County where

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he resides a record of that birth or death written on the adopted forms of birth and death certificates. The certificate shall be substantiated by the affidavit of the medical attendant present at the time of the birth, or in case of death, the affidavit of the physician last in attendance upon the deceased, or the undertaker who buried the body. When the affidavit of the medical attendant or undertaker cannot be secured, the certificate shall be supported by the affidavit of some person who was acquainted with the facts surrounding the birth or death, at the time the birth or death occurred, with a second affidavit of some person who is acquainted with the facts surrounding the birth or death, and who is not related to the individual by blood or marriage. The Probate Court shall require such other information or evidence as may be deemed necessary to establish the citizenship of the individual filing the certificate, and the truthfulness of the statements made in that record. The Clerk of the said Court shall forward the certificate to the State Bureau of Vital Statistics with an order from the Court to the State Registrar that the record be, or be not, accepted. The State Registrar is authorized to accept the certificate when verified in the above manner, and shall issue certified copies of such records as provided for in Section 21 of this Act. Such certified copies shall be prima facie evidence in all Courts and places of the facts stated thereon. The State Bureau of Vital Statistics shall furnish the forms upon which such records are filed, and no other form shall be used for that purpose."

In opinion No. O-4190 we said:

"The certificate must be substantiated by the affidavits mentioned in the Act."

We think the above quoted holding is correct.

In opinion No. O-4278 we said:

"From a careful consideration of this statute, we draw the following conclusions:

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"A. The purpose of the act is 'to procure the uniform observance of its provisions and the maintenance of a perfect system of registration' of births and deaths. The State Registrar of Vital Statistics is required to prepare and issue detailed instructions necessary to effect this purpose.

"B. The State Department of Health shall approve, and 'the State Bureau of Vital Statistics shall furnish, the forms upon which such records are filed, and no other form shall be used for that purpose.' The law contemplates that the forms furnished shall provide space for the furnishing of the information required by the statute, and that the 'use' of such forms shall consist of a substantial compliance with the statute in this respect.

"C. When a 'delayed birth certificate' has been 'verified in the above manner', i.e., by the affidavit of the medical attendant present at the time of the birth; or (in case this cannot be secured) the affidavit of some person who was acquainted with the facts surrounding the birth at the time it occurred, with a second affidavit of some person who is acquainted with the facts surrounding the birth, and who is not related to the individual by blood or marriage; plus (in either case) an order of the Probate Court that the record be accepted; then the State Registrar is required to accept and file the record. But until such verification is complete, and in due form, the State Registrar is not authorized to accept and file the record, . . . We are further of the opinion that the statute contemplates that the 'second affidavit' shall be made by someone other than the person whose birth is being recorded."

The above quoted portion of opinion No. O-4278 we think is correct.

However, we further said in opinion No. O-4278:

"D. The only exception to the requirements noted under rule 'C', above, contemplated by the

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statute, is that, where it is shown to the satisfaction of the Probate Court that it is impossible to verify the facts of the birth in either of the two manners provided by the act, then the court may require such other evidence thereof as he deems necessary, and may base his order that the record be accepted, or be not accepted, upon such other evidence, or the lack of it. But where such a record of birth is submitted to the State Registrar for filing, it should show on its face that it is based upon such other evidence, and that the Probate Court has found the impossibility of securing the statutory affidavits."

We have carefully reconsidered the matter and are now of the opinion that the portion of opinion No. 0-4278 just above quoted is erroneous. We hereby overrule opinion No. 0-4278 insofar as it conflicts with this opinion.

It is our opinion that when a "delayed birth certificate" has been "verified in the above manner", i.e., by the affidavit of the medical attendant present at the time of the birth; or (in case this cannot be secured) the affidavit of some person who was acquainted with the facts surrounding the birth at the time it occurred, with a second affidavit of some person who is acquainted with the facts surrounding the birth, and who is not related to the individual by blood or marriage; plus (in either case) an order of the Probate Court that the record be accepted; then the State Registrar is required to accept and file the record. But until such verification is complete, and in due form, the State Registrar is not authorized to accept and file the record. We are further of the opinion that the statute contemplates that the "second affidavit" shall be made by someone other than the person whose birth is being recorded. It is our further opinion that the "first affidavit" cannot be legally made by the person whose birth is being recorded.

It is therefore our opinion that your question should be answered in the affirmative and it is so answered.

APPROVED JUL 22, 1942

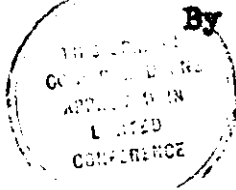
Very truly yours

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ATTORNEY GENERAL OF TEXAS

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Wm. J. Fanning
Wm. J. Fanning
Assistant

By



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